

MASSACHUSETTS 1115 DEMONSTRATION AFFECTING ASSETS OF INSTITUTIONALIZED INDIVIDUALS

Questions Regarding Massachusetts' Transfer of Assets Demonstration

GENERAL

1. We would like to have more discussion of the State's plan to implement the demonstration especially as it pertains to transfers that predate the effective date of the demonstration. Would the new rules governing the start date of the penalty period and the look-back period be applied retrospectively to transfers that occurred prior to the effective date? We are concerned about retroactive enforcement against Seniors who transferred their assets under different Federal Rules.

Also, the Commonwealth proposes to increase the look-back period for transfers into irrevocable trusts from 60 to 120 months for all applicants after the demonstration is implemented. If the state is intending retrospective enforcement and in consideration of the long period of time of the look-back period would the state consider a phase-in of the extension of the look-back period that would begin after the effective date of the demonstration? Also, CMS is still considering the justification for lengthening the look-back period.

FUNDING QUESTIONS

2. Section 1903(a)(1) provides that Federal matching funds are only available for expenditures made by states for services under the approved State Plan. To ensure that program dollars are used only to pay for Medicaid services, we are asking the State to confirm to CMS that providers in the Assets Affecting Institutionalized Individuals 1115 Demonstration (the Demonstration) would retain 100 percent of the payments. Would the State, through the Demonstration, participate in activities such as intergovernmental transfers or certified public expenditure payments, including the Federal and State share; or, would any portion of any payment be returned to the State, local governmental entity, or any other intermediary organization? If the Demonstration would be required to return any portion of any payment, please provide a full description of the repayment process. Include in your response a full description of the methodology for the return of any of the payments, a complete listing of the amount or percentage of payments that are returned and the disposition and use of the funds once they are returned to the State (i.e., general fund, medical services account, etc.)

3. Section 1902(a)(2) provides that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan. Please describe how the State's share of the Medicaid payment for the Demonstration would be funded. Please describe whether the State's share would be from appropriations from the legislature, through intergovernmental transfer agreements (IGTs), certified public expenditures (CPEs), provider taxes, or any other mechanism used by the State to provide State share. Please provide an estimate of total expenditures and State share amounts for the Medicaid payment. If any of the State share would be provided through the use of local funds using IGTs or CPEs, please fully describe the

matching arrangement. If CPEs are used, please describe how the state verifies that the expenditures being certified are eligible for Federal matching funds in accordance with 42 CFR 433.51(b).

4. Section 1902(a)(30) requires that payments for services be consistent with efficiency, economy, and quality of care. Section 1903(a)(1) provides for Federal financial participation to States for expenditures for services under an approved State plan. If supplemental or enhanced payments would be made, please provide the total amount for each type of supplemental or enhanced payment made to the Demonstration.

5. *This is applicable to inpatient hospital, outpatient hospital and clinic services.* Please provide a detailed description of the methodology *to be* used by the state under the demonstration program to estimate the upper payment limit for each class of providers (State owned or operated, non-state government owned or operated, and privately owned or operated).

6. Would any public provider receive payments (normal per diem, DRG, fee schedule, global, supplemental, enhanced, other) that in the aggregate exceed its reasonable costs of providing services? If payments exceed the cost of services, does the State recoup the excess and return the Federal share of the excess to CMS on the quarterly expenditure report?

INDIVIDUALS TO WHOM THE DEMONSTRATION WOULD APPLY

7. Has the Commonwealth considered whether the Transfer of Assets initiative would increase the demand for Home and Community-Based Services (HCBS)? What provisions has the Commonwealth considered for accommodating any increased demand? The application states that the demonstration would not affect individuals in community settings or individuals currently receiving benefits under the existing demonstration. If an applicant asks for HCBS as an alternative to institutional care, does the State have slots available to accommodate these individuals?

8. While the demonstration will affect nursing facility applicants, would the demonstration affect individual applicants for ICF-MR or other long-term institutional services? How would the demonstration affect individuals in community settings (receiving Medicaid) who need to transfer to an institution?

LOOK-BACK PERIOD

9. Why does the State believe that the current look-back periods are inadequate? The request to extend the look-back period for irrevocable trusts from 5 years to 10 years seems especially far-reaching.

TREATMENT OF CERTAIN ASSETS

10. What recourse does an individual have if he or she challenges some aspect of the State's review of the application? For example, assume that an applicant argues that a home improvement which the State deemed a transfer of asset at less than fair market

value is indeed a necessary home maintenance cost. Can the applicant appeal the State's decision--if yes, please describe the appeals process.

11. At several points, Massachusetts suggests that the spousal protections of Section 1924 would continue to apply. However, section 5.2 of the proposal specifically changes the rules that apply only in a spousal impoverishment context. Please explain.

12. Does the State have the legal authority to restrict what an individual may and may not spend their assets on? How does one define “necessary living expenses”? Would the restriction against home improvements deter individuals from making home improvements that may allow them to stay in the community?

BUDGET NEUTRALITY

13. Is the four-month average penalty period assumed in the budget neutrality projections an assumption or based on experience? Please describe how the \$33,000 transfer amount estimate was determined for calculating the penalty period.

14. Please describe any information on the number of caseload months the Commonwealth has diverted under the current rules for transfer of assets.

15. The application states that the demonstration will not have significant additional administrative costs. Wouldn't there be more administrative burden on State staff to implement the proposed changes—for example, new duties would include tracking down sequential transfers, assessing the value of non-countable assets, determining what portion of an equity loan should be treated as a transfer of asset of less than fair market value. Wouldn't these new activities have costs?

OUTREACH/EDUCATION

16. Public outreach and education will be important step in discouraging individuals from making transfers of assets to qualify for Medicaid payment of long-term care services, a stated objective of the demonstration. How will the Commonwealth implement public education and outreach activities? Please describe any efforts is the Commonwealth is making to encourage and assist retirees and pre-retirees to plan ahead for long-term care financing without relying on Medicaid.

EVALUATION

17. CMS would like to further discuss the evaluation aspects of the demonstration. Specifically, we are interested in determining the demonstration's hypotheses, the data to be collected, and how the evaluation would be implemented.